IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1882 OF 2005

WITH

WRIT PETITON NO. 1904 OF 2005

SMT. DRAUPADI MAHADEO GURAV & ORS... PETITIONERS

Vs.

DR. ANTONIO D'SILVA TRUST & ORS. .. RESPONDENTS

Mr. P. G. Lad for petitioners

Mr. Clive D'souza for R.

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-3-2005

P.C.

These two writ petitions arise out of two suits which were disposed of by a common judgment of the Small Causes Court at Bombay. One Mahadeo Gurav was working as a peon in Dr. Antonio D'silva High

School, situate at S. K. Bole Road, Dadar, Mumbai. By a letter dated 30/3/73 the Principal of the school allotted the suit premises to him for his use and occupation on a monthly compensation of Rs.10/- per month. The premises were allotted to the said Gurav for use as a residence by reason of his being in the service of the said school. The said Gurav died on 26/10/87. The trust called upon the heirs of Mahadeo Gurav to vacate the suit premises. They did not vacate the suit premises. L.E. & C. Suit No. 401/460/88 was filed by Dr. Antonio D'silva Trust and its trustees against the wife and sons who are the heirs of the said Mahadeo Gurav inter alia for an order directing the defendants to handover to the plaintiffs vacant and peaceful possession of the suit premises. R. A. Declaratory Suit No. 475 of 1988 was filed by the wife of deceased Mahadeo Gurav against the respondent trust and its trustees for a declaration that she is a tenant of the suit premises and for injunction restraining the defendants from dispossessing her and her children from the suit premises.

3. Both the suits were tried together as the subject matter of the suit is the same. The evidence is also the same. The trial court held that the respondent trust had proved that Mahadeo Gurav was allotted suit premises by reason of his being in the employment of the respondent trust on nominal sum of Rs.10/- per month and that the licence was revoked by letter dated 23/11/87 on the death of Mahadeo Gurav on 26/10/87. It was

held that wife of deceased Mahadeo Gurav had failed to prove that she was a monthly tenant of the suit premises and that she was entitled to be declared as a tenant under Section 5 (ii) (c) of the Bombay Rent Act.

4. The heirs of deceased Mahadeo Gurav filed two appeals being aggrieved by the said judgment and order. Both the appeals were disposed of by common judgment by the lower appellate court by its judgment and order dated 8/12/2004. That judgment is under challenge before me.

5. Since both the appeals contain common facts and common contentions, it will be convenient to dispose them of by a common order. Hence this common order.

6. I have heard at some length Mr. Lad, learned counsel for the petitioners-defendants. He contended that the impugned judgments and orders are perverse and hence need to be set aside by this court. He contended that the courts below have failed to appreciate the most vital evidence. He drew my attention to certain receipts which are at Exhibit-A collectively. These receipts are issued by the respondent trust to deceased Mahadeo Gurav. These receipts are in respect of the money paid by the deceased to the trust for occupation of the suit premises. In the said receipts payment is described as rent. The learned counsel also relied on the memo dated 10/7/85 issued by the Secretary of the respondent trust to deceased Mahadeo Gurav calling upon him to pay rent from 1/1/78 to 1/12/88. The

learned counsel submitted that the use of the word “rent” in the receipts clearly establishes that deceased Mahadeo Gurav was a tenant of the suit premises. The learned counsel then contended that reliance placed by the courts below on Exhibit-B which is the letter of allotment is wrong. He contended that this letter is not proved.

7. He drew my attention to the evidence of one Mr. William Pereira, who is one of the trustees of the respondent trust. The learned counsel submitted that Mr. Pereira has stated that Exh.-B letter is signed by Principal Miss Josephine Murzello and that he was not personally present at the time when this letter was executed. The learned counsel contended that Principal Murzello has not been examined. Mr. Pereira has no personal knowledge about the letter of allotment and in the circumstances the courts below could not have relied upon the letter of allotment. He, therefore, submitted that the impugned judgments and orders should be set aside.

8. I am unable to agree with the learned counsel. Both the courts have held that deceased Mahadeo was allotted the suit premises by reason of his employment with the school on nominal monthly compensation of Rs.10/- and that the licence is revoked by letter dated 23/11/87, on the death of the deceased on 26/10/87. In my opinion, this finding of fact returned by the courts below cannot be characterised as perverse calling for my

interference. Exh.B the allotment letter clearly indicates that the temporary shed which is occupied by the defendants was vacated by Paul Parmer and that was allotted to the deceased from 1/4/73. It is categorically stated that Mahadeo Gurav's staying in the said room did not confer any tenancy rights on him and that he cannot transfer or assign the suit premises to any one. It is further stated that on termination of service the deceased was to give vacant possession of the suit premises to the trust. This document has been produced by the trustee of the respondent trust. Considering the fact that respondent is a trust, a document coming from the trustee can safely be relied upon. It was, therefore, not necessary for the Principal to step in the witness box to prove this document. The use of word “rent” in the receipts is not sufficient to infer tenancy. The courts below have properly dealt with this issue. I concur with the observation of the courts below that rent receipts are issued by the employees of the trust and the word “rent” is wrongly used by the employees. In my opinion this is a case where the service premises are being usurped by the deceased and his family. The orders impugned cannot be disturbed. Hence writ petition is dismissed.

9. At this stage Mr. Lad learned counsel for the petitioners states that some time may be given to the petitioners to vacate the suit premises. In the circumstances the petitioners are given two month's time to vacate the

premises on the petitioners and every adult member of their family filing usual undertaking in this court within three weeks from today.

10. Certified copy expedited.